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ATTORNEYS AT LAW

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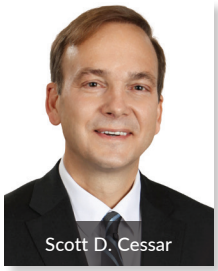
CONSTRUCTION LAW

In This Issue...

Ten helpful construction law tips/reminders of legal significance


Scott D. Cessar

I have listed below 10 helpful construction law reminders/tips of legal significance that construction industry professionals sometimes are unaware of or fail to consider. Each of these reminders/tips has been the focus of a prior article found on our website by clicking here.

1. Claim waivers. Owners: Definitely include in the general conditions that general contractors will be required to sign claim waivers for every pay application and change order. For general contractors, be sure to include the same obligations in the terms required of your subcontractors and suppliers. For general contractors, subcontractors, and suppliers, do not sign these waivers if you have claims. Do not hesitate to type on to the waiver form all reserved claims and, in appropriate circumstances, reserve rights for impacts and delays that may arise from events that occurred precedent of the pay period or that arose from, or that could arise from, the subject of the change order. All company controllers, billing clerks, and project personnel involved in the payment process should be schooled on this subject.

2. Pay if paid and pay when paid clauses. These clauses are not as absolute as they used to be. In many states, pay when paid clauses may not mean forever, as courts have construed such clauses to impose a reasonable time for payment. In addition, there is legal authority now extant, which holds that such clauses may not be

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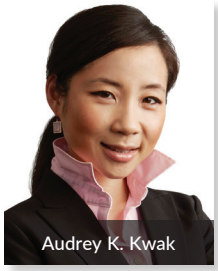
Government response to request for information constitutes design specification, entitling contractor to equitable adjustment


Audrey K. Kwak

A recent decision from the Civil Board of Contract Appeals underscores, yet again, how critical **all** contract language is to determining entitlement to an equitable adjustment. In *Wu & Assocs., Inc. v. General Servs. Admin.* (Nov. 10, 2021), the Board held that the General Services Administration (GSA)'s RFI pre-award response (incorporated into the contract) was a defective design specification that entitled the contractor, Wu, to additional funds.

Design v. performance specifications

As contractors contracting with state or federal agencies are well aware, whether a specification is classified as a "design" or "performance" specification is critical to

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Ten helpful construction law tips/reminders of legal significance

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enforceable, under the prevention doctrine, if the general contractor's conduct, be it deliberate or inadvertent, caused the owner not to pay the general contractor. In such circumstances, the subcontractor or supplier may be able to overcome these clauses and obtain payment.

3. Performance bonds and extended warranties. Many construction contract warranties for discreet items, like roofing and mechanical systems, extend well beyond the standard one-year period from substantial completion. What if the supplier of these items goes out of business or fails to respond? Can the owner claim under the performance bond? The answer is that it depends on the language of the bond and whether it incorporates the terms of the general contract, including the supplier warranties. Owners faced with the predicament of a supplier who cannot or will not perform should review the contract, the bond, and the warranty to determine if there may be surety liability.

4. Miller Act claims on payment bonds. The Miller Act applies to all federally funded projects and governs payment bond claims. There is a growing body of law under the Miller Act that precludes sureties from defending subcontractor payment bond claims based on the defenses available to its principal, the general contractor. This is a potent weapon for subcontractors. Some states have what are known as "Little Miller Acts," which are comparable to the federal Miller Act, and under which the same argument may be tenable.

5. Performance bond claims. Owners should read the terms of the performance bond carefully and follow them to the letter, even if it results in delay in receiving a response from the surety. Many performance bonds require a meeting between the surety and the contractor and the owner. This is a required step and should be requested, notwithstanding that the surety will likely not undertake any affirmative action, under most performance bonds, unless and until there is a termination of the contractor's employment. Owners should take care not to terminate the contract, but to terminate the employment of the contractor as the contractor under the construction contract.

6. Indemnity clauses. These should be carefully read and, if need be, negotiated. General contractors and subcontractors should take care not to agree to indemnify a party against that other parties' own negligence. General contractors and subcontractors should consult with their insurance brokers on indemnity clauses, as many times their insurance will not cover one-sided contractual indemnity obligations. If the value of the job warrants agreeing to such a one-sided indemnity clause, there may be a project specific insurance rider, which may be purchased for an additional premium. Also, it may be that the indemnity term is unenforceable based on what are known as "anti-indemnity" statutes that some states have enacted to prevent such risk shifting.

It pays to check state law where the project is located.

7. Change orders. Many a valid claim for an extra has run ashore on the shoals of failing to follow the terms of the contract by giving notice of a change and advising the owner of the issue, even if the contractor is uncertain of whether it will be compensable or will impact the schedule. Often the contractor will not, particularly at the beginning of a project, want to jeopardize its relationship with the owner by giving notice of a claim. The better practice, however, is to provide notice so that the owner may adjust the work or the schedule to avoid the extra. The long and short is that it is better to be safe than sorry. And if the contractor is uncertain as to whether there will be an impact and they are not sure of the magnitude, the contractor should inform the owner of these circumstances in its notification.

8. Mediation. Successful mediations require parties factually and legally armed to cogently articulate their positions and a mutual intent to determine if there is a common ground. Parties should carefully vet potential mediators to determine that they have the requisite real-world construction law experience and also the ability and willingness to work the parties hard and stick to it even after the mediation session may have ended. No party should come to a mediation and announce to the other side that it will not settle for less than some amount or will not pay any more than some amount. Such an approach may well poison the environment such that the possibility of the mediator working a settlement is greatly impaired, as a party will not want to seem as if it backed down or was weak. Parties should inform the mediator of expected outcomes and let him or her deal with it.

9. Venue selection clauses. These should not be taken for granted, as oftentimes they will require litigation in locations distant from the project site. There is a reason parties include such clauses in contracts: It discourages the other party from seeking to enforce its rights by making litigation for the other side more expensive and providing the contract drafting party at least the perception of having the home-field advantage. Many state law payment acts make these clauses unenforceable; however, some federal courts will not enforce state laws prohibiting venue shifting clauses that shift venue from the state of the project site.

10. State law payment acts. The law of the state where the project is located should be consulted to determine if such an act is in place in that state. If so, the provisions of these acts should be consulted by the owner, general contractor, and subcontractor alike, as they will normally govern over contract terms and, if not followed, may provide for added interest, penalties, and the recovery of attorney fees for the prevailing party.

I hope that your time reading through these 10 tips/reminders will prove beneficial down the road.

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Government response to request for information constitutes design specification, entitling contractor to equitable adjustment

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determining a contractor's ability to secure additional compensation from the government when—inevitably—unexpected challenges arise.

In brief, a **design specification** requires strict compliance by contractors and carries with it an implied warranty from the government that the specification is free from defects. Provided a contractor adheres to the specification, that contractor is entitled to an equitable adjustment if the contractor incurs additional costs incurred due to its reliance on the defective specification.

By contrast, a **performance specification** carries with it no such implied warranty. Instead, a performance specification "merely sets forth an objective without specifying the method of obtaining the objective," leaving it to the contractor's discretion to determine how to achieve the objective.

Specification in Wu

In *Wu*, Wu was awarded a contract with the GSA for the modernization of elevators in a New York federal building. In a pre-award Request for Information (RFI), a bidder asked about a false floor, expressing concerns about the strength of the floor when moving elevator equipment across it. In response, the GSA answered:

> This would be **"Means and Methods"** by the contractor. It may be a challenge but requires careful planning. On 17th floor, **proper skids are required** over the raised floor to distribute the load.

The RFI and GSA response were incorporated into the contract. During a post-award walk-through, Wu noted that the floor at issue appeared damaged. Deciding that the floor was likely not strong enough to accept the weight of the elevator machines without further damage, Wu hired a structural engineer to "provide the necessary engineering to reinforce the stanchions that supported the raised floor." Wu then submitted a change order request for reimbursement of those costs, stating that it had relied on the representation in the RFI response that the floor was adequately strong and only "proper skids" would be required.

GSA denied Wu's request. In so doing, GSA relied on the "means and methods" language, asserting that movement of the elevator equipment was a means and methods determination to be made by the contractor.

On appeal, the Board reversed GSA's denial. The Board found that the statement that "proper skids are required" was "directional," "[did] not reflect an option" (despite the "means and methods" language), and "clearly reflect[ed] that skids must be used." In other words, GSA's response to the RFI constituted a design specification. Because evidence established that the use of skids would have been feasible for the work, the specification was defective, and Wu was entitled to the additional compensation it sought.

This decision highlights the importance of precision in the language of any contract—particularly lengthy, complex government contracts that incorporate pre-award correspondence and other documents by reference. Additionally, for contractors, it emphasizes the importance of thoughtful questions at the bid stage. And it is a cautionary tale for government agencies providing responses to those questions.

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Court reminds contractors to comply with insurance policy conditions

A Louisiana appellate court's recent decision serves as a reminder to policyholders, especially those in the construction industry, of the importance of complying with conditions precedent contained in an insurance policy. Failure to do so may result in an unexpected denial of coverage, as it did here.

The case of *Baudoin v. American Glass and Mirror Works, Inc.* involved a claim by a contractor's worker, Mitchell Baudoin, for personal injuries allegedly sustained on a job site. Baudoin sued a number of entities, including the general contractor, Charles Goudeau d/b/a Charles Goudeau General Contractor, and Goudeau's insurer, Accident Insurance Company (AIC).[1] Baudoin alleged that while he was working at Goudeau's job site installing flooring for Southern Title Company, Inc ., he was struck by a vehicle after exiting a portable restroom. He claimed that Goudeau was negligent in its placement of the port-a-potty near a vehicular travel lane.

AIC filed a motion for summary judgment in the trial court arguing that there was no coverage for Baudoin's claim under the Comprehensive General Liability (CGL) policy that AIC issued to Goudeau due to the application of an exclusion and endorsement. The trial court found that there was a disputed issue of material fact concerning the Employees and Contractors exclusion, which precluded summary judgment on that basis.

However, the trial court agreed with AIC that the endorsement barred coverage because Goudeau had failed to comply with that endorsement's conditions precedent to coverage.

In particular, the AIC policy contained a "Contractors Special Conditions" endorsement, which added the following to the "Conditions" section of the insurance policy:

> As a condition precedent to coverage for any claim for injury or damage based, in whole or in part, upon work performed by independent contractors, the insured must have, prior to the start of work and the date of the "occurrence" giving rise to the claim or "suit":
>
> (1) Received a written indemnity agreement from the independent contractor holding the insured harmless for all liabilities, including costs of defense, arising from the work of the independent contractor;
>
> (2) Obtained certificates of insurance from the independent contractor indicating that the insured is named as an additional insured and that coverage is maintained with minimum limits of $500,000 per occurrence;
>
> (3) Obtained proof that the independent contractor has workers compensation insurance if required by the state in which the job(s) is located; and
>
> (4) Obtained proof that all licenses as required by local and/or state statute, regulation, or ordinance are up to date.
>
> The insured must maintain the records evidencing compliance with paragraphs (1) through (4) above for a minimum of five years from the expiration date of this policy. If coverage indicated under (2) and (3) above are not maintained, we shall have no obligation to defend or indemnify any insured for work performed by independent contractors on your behalf represented by the certificates of insurance referenced in (2) and (3) above.

AIC argued that there was no coverage under the Contractors Special Conditions endorsement because Goudeau admitted in his deposition that he had not obtained any of the required documents and that he had not provided AIC with any certificates of insurance from subcontractors naming Goudeau as an additional insured. The trial court agreed and granted summary judgment to the insurer.

On appeal, Baudoin argued that the Contractors Special Conditions endorsement was unlawful under Louisiana's Anti-Indemnity Act, La. Rev. Stat. § 9:2780.1, which prohibits certain types of indemnification provisions or agreements in construction contracts. The Louisiana Court of Appeal, Third Circuit, disagreed, stating that "[w]hile subsection (B) of [the Anti-Indemnity Act] prohibits indemnity agreements, subsection (C) expressly permits additional insured contracts." Thus, the appellate court found there was no error in the trial court because Baudoin failed to satisfy the conditions for coverage under the AIC policy.

The lesson to be learned from *Baudoin* is that all parties to a construction project should be careful to ensure that they are satisfying their respective insurance policy's conditions precedent to coverage … and perhaps should think twice when deciding where to place port-a-potties at the jobsite.

[1] Louisiana is a "direct action" state, which provides claimants with a procedural mechanism for asserting claims directly against an alleged tortfeasor's insurance company in some instances.

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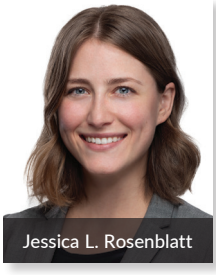
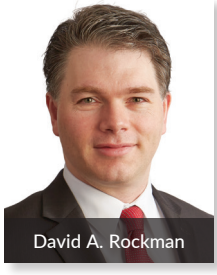
Regulatory alert: EPA to consider designating PVC as hazardous waste and its potential impact on the construction industry


Jessica L. Rosenblatt


David A. Rockman

Polyvinyl chloride, better known as PVC or vinyl, is one of the most commonly used plastic polymers in the world. However, following a long-awaited settlement agreement with environmental advocates, EPA is now tasked with determining whether PVC should be regulated as a hazardous waste.

On May 4, 2022, EPA published notice of a proposed consent decree that would resolve allegations by the Center for Biological Diversity (CBD) that it unreasonably delayed in acting on a 2014 petition to list discarded PVC as hazardous waste under the Resource Conservation and Recovery Act. Under the agreement, EPA must issue a tentative decision on classifying the material as hazardous waste by January 20, 2023, and a final decision by April 12, 2024.

PVC is the most commonly used plastic in the building and construction industry due to its low cost and durability. It is a mainstay in building and construction materials—so much so that it is known as the "infrastructure plastic." Industry estimates indicate that upwards of 70% of all PVC produced is used for building and construction. PVC pipe alone has been produced since the 1930s, when production of PVC first began to accelerate. The plastic is commonly found in windows, pipes, ductwork, roofing, flooring, and cables. Outside of the building and construction industry, PVC is readily used to make children's toys, medical devices, clothing, electronics, household goods, consumer packaging, and many other products.

Approximately seven billion pounds of PVC are discarded each year in the United States, with experts anticipating those amounts will only increase in the near future. Additionally, PVC makes up a substantial portion of ocean litter, which already consists of as much as 80% lightweight and durable plastic trash. A significant portion of discarded PVC products are attributed to the building and construction industry.

Some experts believe PVC may cause health problems, including reproductive harm, abnormal brain development, obesity, liver damage, and cancer. CBD has argued for its regulated disposal for nearly a decade, asserting that it is toxic to human health, wildlife, and the environment, particularly after its disposal, when CBD further asserts that harmful components may leach out of PVC and contaminate the surrounding environment.

CBD's petition not only asks that PVC be regulated as a hazardous waste at the initial chemical manufacturing stage but also at the stage of finished materials and products. This could have severe consequences for industries like building and construction that utilize and discard large amounts of PVC on a regular basis. If EPA proceeds with listing PVC as a hazardous waste, it will be tasked with developing a comprehensive framework for regulating its safe use, storage, and disposal. Common materials, such as discarded PVC drill cuttings and leftover PVC pipe and flooring, would likely be regulated as hazardous waste.

Public comments on the proposed consent decree were due by June 3, 2022.

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Government contractors beware: Submission of dubious claims subject to dismissal and imposition of statutory penalties


David Meredith

The United States Court of Federal Claims (COFC) recently issued a scathing decision admonishing a government contractor (the Contractor) for submitting dubious claims on a levee rehabilitation project (the Project) for the U.S. Army Corps of Engineers (ACOE). The COFC went so far as to say: "This case should serve as a cautionary tale to government contractors." In short, the COFC's opinion is a blunt reminder of the obligations and steps a contractor must take in preparing, certifying, and submitting claims against the United States (the Government) and the consequences if the Contractor crosses the line.

In this instance, the story begins with the ACOE awarding the Contractor a fixed-price contract (the Contract) in August 2010 to rehabilitate a levee in Palm Beach County, Florida. During the Project, the Contractor certified three claims for increased cost and delay, totaling more than $6 million. The contracting officer denied those claims, and the ACOE subsequently terminated the Contractor for cause. The Contractor then filed suit against the Government under the Contract Disputes Act (CDA). The Government responded by asserting: (1) an affirmative defense that the Contractor's claims were barred by illegality based on the submission of false claims and (2) counterclaims for breach of contract and for fraud pursuant to the Special Plea in Fraud statute, CDA, and False Claims Act. Following the submission of summary judgment motions, the COFC dismissed the Government's claim under the CDA for lack of subject matter jurisdiction and denied the Contractor's attempt to dismiss the Government's fraud counterclaims. The Court then proceeded with a bench trial on the Government's fraud allegations based on the Contractor's alleged submission of false delay-day costs and exaggerated equipment costs.

The Court concluded that the Contractor committed two violations of the False Claims Act by certifying and submitting false claims to the ACOE. Specifically, the Court observed the following:

> At trial, the [Government] showed that [the Contractor] misrepresented the value of certain equipment, billing the [Government] for operating four off-road dump trucks collectively valued at over $3,500,000 when the trucks were actually worth less than $100,000 combined. The [Government] also demonstrated that [the Contractor] designed a ratio to inflate its total equipment, labor, and overhead costs—a ratio through which [the Contractor], at times, billed taxpayers at rates between $2,000 and $22,000 per hour for work performed by a single laborer or piece of equipment. [The Contractor] also manipulated that already-dubious ratio by seeking compensation for work performed on days outside of the claim period, often with nominal expenditures of manpower, effort, and resources.

Indeed, the Court stated that the Contractor's claims were "patently deceitful" and observed that "[w]hen job cost data and recordkeeping are inaccurate, the claim will inevitably contain errors and the line between negligence and reckless disregard for the truth becomes vanishingly thin." The Court found that the Contractor crossed the line knowingly and intentionally (or at a minimum with reckless disregard) by: (1) failing to earnestly undertake the obligations of claim certification; (2) failing to accurately identify the equipment it used and support the valuation of that equipment with proper documentation; (3) using a dubious metric, riddled with errors, to measure its inefficiencies and dishonestly inflate its claims; (4) employing an artifice through which it sought to inflate costs of its equipment by reporting operation hours that were not consistent with internal records; and (5) seeking double recovery of costs. Acknowledging that its ruling would result in "financial, practical and stigmatic consequences" for the Contractor, the COFC nonetheless held that the Contractor's claims were forfeited in their entirety and proceeded to impose the maximum statutory penalty of $11,000 per claim under the FCA.

Notably, the Government did not incur any actual damages in this matter, as it had previously denied the Contractor's claims in their entirety. But, whether the Government incurred actual damages was not the point. The COFC's opinion is clearly intended to drive home the proposition that: "[Contractors] must turn square corners when they deal with the Government." When contractors on public projects cross the line by preparing and submitting unsubstantiated and inflated claims, they should expect a stiff retort.

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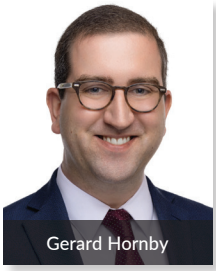
Challenging an agency's evaluation of a bidder's past performance – An uphill battle


Gerard Hornby

It is well known that on public projects solicited by governmental agencies, an agency's evaluation of a bidder's past project performance must be reasonable and consistent with the solicitation, as well as applicable statues and regulations. When a bid protestor appeals a federal agency's decision to the Government Accountability Office (GAO), the agency's evaluation is granted a significant amount of discretion, and protestors have an uphill battle in challenging agency evaluations absent compelling evidence.

The disappointed bidder (the Protestor) in the *Matter of Shimmick Construction Company, Inc.*, B-420419.2 (May 9, 2022) was one such aggrieved party lacking sufficient indicia of an agency's abuse of discretion. The GAO's decision provides a concise restatement of the law in this area and serves as an ever-timely reminder to bid protestors on federal projects of the high standards they must meet in challenging an agency's decision before the GAO.

In September of last year, the U.S. Army Corps of Engineers (the Agency) issued solicitations for a $37.1 million contract for dam maintenance support at the Olmsted Locks and Dam on the Ohio River in Olmsted, Illinois. The Agency evaluated the bids based upon the best value, past performance, technical capabilities, and small business participation. Following debriefing, the disappointed bidder filed a protest with the GAO.

The Protestor argued that the Army Corps should not have considered the Protestor's performance on a separate lock and dam project on the Tennessee River (the Tennessee River Project). Because the Tennessee River Project was currently ongoing, the Protestor claimed that it was not "recent" as defined by the solicitation, i.e., it was not "recently completed." And because it did not involve underwater or dredging work, the Tennessee River Project was, according to the Protestor, not relevant. The GAO disagreed. Firstly, nothing in the solicitation limited the Agency's evaluation to only completed projects. And secondly, an agency's evaluation of past performance, which includes its consideration of the relevance, scope, and performance history, is a matter of agency discretion. It was reasonable for the Agency to find relevant the Protestor's marginally rated performance on another river project with a similar scope, under the same Agency, and using similar equipment.

Additionally, the Protestor claimed that it should have been given an opportunity to respond to the Agency's consideration of the Tennessee River Project's performance assessment report—which included negative assessments of the Protestor's performance. This was unpersuasive, however, because the report itself already contained the Protestor's responsive comments. The GAO did not find the Agency unreasonable in concluding that the Protestor had not been deprived of any opportunity to comment on issues concerning the Tennessee River Project.

Related to this was the Protestor's equally unconvincing argument that the Agency was motivated by bias when it considered the Tennessee River Project because the Agency and the Protestor were currently involved in a not entirely uncontentious equitable adjustment. But the GAO presumes that agency officials act in good faith, and mere suggestions of malicious intent that require inference and supposition will not support a protest. The protestor must be prepared to provide convincing evidence of improper action by an agency. Again, the GAO was not persuaded that the Agency acted unreasonably toward the Protestor in this regard.

The Protestor also tried to challenge the Agency's technical evaluation, claiming that the Agency unreasonably rejected its bid despite assigning it a "good" rating and mentioning no weaknesses. In a common refrain, the Agency rejected this argument under the principle that Agencies have considerable discretion in making subjective judgments about the technical merit of proposals, and technical evaluators are given the discretion to decide whether a proposal "deserves a 'good' as opposed to a 'very good' rating."

Protesting an agency action with the GAO has many requirements, and this decision is useful for litigants in that it highlights key concepts of law involved in bid protests on federal projects before the GAO and exemplifies the burden of proof by the protestor.

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Massachusetts Appeals Court strictly construes Prompt Payment Act


Scott A. Aftuck

In a case of first impression, the Massachusetts Appeals Court affirmed the Superior Court's granting of summary judgment to a general contractor in the amount of $4,600,109.24 against a project owner who failed to comply with the provisions of the Prompt Payment Act, M. G. L. c. 149, § 29E (the Act) in a case encaptioned: *Tocci Building Corporation v. Iriv Partners, LLC*, 101 Mass. App. Ct. 133, 2022 Mass. App. LEXIS 47 (Jun. 7, 2022).

The Act was designed to ensure the prompt payment of invoices during the course of a project and applies to private projects where the contract with the project owner has an original contract price of $3,000,000.00 or more, and is applicable to all contracts on such projects, including those between lower tier contractors. Pursuant to the Act, applications for periodic progress payment must be submitted within thirty (30) days of the work being commenced; approval or rejection of an application must be made within fifteen (15) days after submission; and payment must be made within forty-five (45) days after approval.

The timelines for approval or rejection of an application is extended by seven (7) days for each tier of contract below the owner. Rejection of an application in whole or in part must: (1) be in writing; (2) include the factual and contractual basis of the rejection; and (3) be certified as having been made in good faith. An application that is neither approved nor rejected within the applicable time period is deemed approved unless it is subsequently rejected before the date payment is due under the Act.

In *Tocci*, the owner failed to reject seven (7) applications for periodic payment made by the contractor in strict compliance with the Act and, by operation of law, each became due and payable. Despite its noncompliance, the owner claimed it was entitled to withhold payment because the contractor performed defective work, failed to perform certain contractually required work, and submitted fraudulent payment requisitions. The Court disagreed, holding that the owner's failure to provide the factual and contractual basis for the rejection with the requisite good faith certification was fatal to the owner's attempt to withhold the funds, stressing that the requirement for the owner to certify that the rejection was made in good faith was "an essential component of the statute" and could not be ignored.

However, the Court held that the owner's claims for breach of contract *had not been waived* by its failure to include them in a proper rejection of the payment applications—the owner was allowed to pursue its claims and potentially recoup the funds that it had paid the contractor. The Court was clear: "The point of the legislation is that these payments may not be withheld, even on valid grounds that they are not due because of a breach of contract, unless a timely rejection is made in compliance with the statute. . . . Because [the owner] here did not do that, [it] must pay what is due, even though [its] claims against the contractor have not yet been fully resolved." As such, the Court also affirmed the Superior Court's holding that the Owner must pay the full amount of the judgment award prior to the final determination of the owner's claims.

Accordingly, Massachusetts owners and contractors must be aware of and strictly comply with the Act to avoid being forced to make full payment of a payment application up front and then having to seek reimbursement for its claims at a later date.

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Construction Law Group NEWS

Gerard Hornby has joined our Construction law group in our Pittsburgh office. Gerard is a native of Great Britain and is a graduate of Duquesne University and the Duquesne University School of Law. He has significant construction law experience, including with bid protests, the prosecution and defense of delay and impact claims, and differing site condition claims.

Gerard also counsels clients on the drafting and negotiating of contract terms and conditions, lien rights, and payment and collection issues. We welcome Gerard aboard.

Scott Cessar and **Christopher Opalinski** have been selected for inclusion in the 2022 edition of *Pennsylvania Super Lawyers*, published by Thomson Reuters. This is the 18th consecutive year they have been included as Top Attorneys in Construction Litigation. Scott and Chris were also both recognized in the 28th edition of *The Best Lawyers in America*©.

Christopher Opalinski and **Jacob Hanley** recently garnered two extremely favorable jury verdicts in cases tried before juries in state court in Pittsburgh, PA on behalf of separate contractor clients. One verdict was for just over $400,000 and the other verdict was for just over $660,000. They will now be seeing awards for our clients of attorney fees, penalty interest and interest under Pennsylvania statute.

Following a 40-day bench trial earlier this year in state court in Corpus Christi, TX, **Scott Cessar** and **Scott Bowan** recently received a verdict exonerating a long-term client which supplies equipment to the water and wastewater industry from any liability in connection with a dispute between a governmental owner, contractor, engineer, and client in a case involving upwards of $40 million in claims and counterclaims.

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